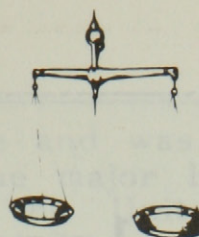


# Quid Novi



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McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT UNIVERSITY MCGILL

January 26, 1983

26 janvier, 1983

## LSA Council Debates Student Rep

by Joseph Rikhof

The agenda for the LSA council meeting of Jan. 18 did not look too exciting. It only included officers' reports. But the President's report on student representation provided some lively discussion.

Roger Cutler presented the report of the committee on student representation, which had been working on the matter since Sept. 1982. The committee concluded from statistics received from other law schools in Canada that the professor-student ratio on Faculty Council is by far the worst at McGill. The committee is ready to bring a motion to the Faculty Council soon but two problems still need to be worked out.

The first one is the ratio of students to faculty. The committee is still defining the student-faculty ratio, which is presently 8 to 1. The committee wants to increase it to 3 to 1.

The second problem concerns who should be considered student representatives to Faculty Council. The most recent idea of the committee is to have elections for student representatives who will also be sitting on a standing committee. This suggestion brought the most discussion, which varied from comments like Fred Hoefert's, that the committee should only concentrate on the ratio issue, to concerns of the

election procedure for standing committee members. Fran Boyle preferred the present system where standing committee members are appointed by the LSA. As was pointed out by Stephen Forgarty and Roger Cutler, this system was designed to build support from the faculty. If student council members would be elected there would be little possibility that they would vote en bloc. Because of time constraints the council decided to call a special meeting to discuss the student representation issue.

The reports of the other

officers were basically announcements. The VP Common Law, Fran Boyle, announced that the Boulton Fund report was approved by Faculty Council. She also mentioned the fact that the Job Bank desperately needs volunteers for a telephone survey of the Greater Montreal area. Some Council members expressed their doubts about the usefulness of the Osgoode Hall articling service. The possibility was brought forward to subscribe every two years, since not all that much changes from year to year. Nevertheless it was decided that as long as

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## Faculty discusses Review

by Demetrios Xistris

The Faculty, at the Dean's request, held a staff meeting on January 15th at the Faculty Club to discuss the recommendations and conclusions of the Ad Hoc Faculty Review Committee.

The Dean described the meeting as a "free-flow of discussion" on topics such as curriculum, library, admissions, space, post-graduate studies, student representation, committee structures, and research and publication. The Dean categorized the Report as "good news" and guaranteed that "no decisions had been made." He added that "no votes, no motions, nothing of that matter" took place. However, the Dean had to remind the Faculty several

times that the meeting had not been called so that votes could be taken. "There were very clear indications that no decisions could be taken because students were not present," Dean Brierley said.

The meeting ended with an agreement that the Dean would proceed to send the complete Review report to Faculty Committees, wherein relevant sections of the Review would be debated. Results of the discussion would be reported to the Dean with a view to their co-ordination prior to submission to Faculty Council. The presence of students on these committees indicates the Faculty's desire to have student participation in the debate over the Review.



## Part 1: Vining on legal education

Quid Novi was able to interview Professor Vining of Michigan Law School on his recent visit to McGill. The interview was conducted by Richard Janda, Daniel Gogek, and Henri Pallard.

**Janda:** In your lecture here you spoke about disenchantment generally in the legal profession. I wondered if you had some reflections about students' discontent in particular.

**Vining:** Well, this is a problem in the United States. At Michigan we had something called the Sax Report a couple of years ago. It was authored by a Committee of faculty members set up to worry about the curriculum and the course of legal education at the school. Essentially, the report indicated a strong case of the "blahs". Does that mean something to you? A lot of students were floundering around by second and third year. Just this year, a similar committee at Harvard Law School, called the Michelman Committee, came out with a report that was filled with a good deal more jargon, I think, but came to very much the same conclusion. So I don't think this is a phenomenon peculiar to Canada.

**Pallard:** To what do you attribute the "blahs" and when do they first appear? Justice Jerome Frankfurter suggests in an article that they appear in third year.

**Vining:** Well, they are now thought to appear in second and third year, so we've made progress. The first year is thought to be the essential year. Then, unfortunately, come the

grades. I don't know exactly how you handle grading at McGill or Canadian Law schools generally, but at Michigan, grades are terribly important in the school and terribly important for job prospects. For years, people tended to internalize those grades. If they'd get average grades, then they'd think "Well, I'm just an average person", rather than say "These dolts, these graders, don't know what they're doing. If they'd only see this jewel that I am." And one problem is that since we grade on a curve, lots of people, inevitably, must do poorly.

**Janda:** What does the curve look like at Michigan?

**Vining:** It's not a standard Bell. The median is somewhat lower in first year than in upper years. It's not meant to be an enforced curve, but tends to work that way because your individual grading behaviour is monitored by the Dean. And the Dean will periodically send you data to show how your grading compares with others.

**Gogek:** Do you think that it's right for students to internalize grades?

**Vining:** No, I don't. I think it's very sad. It sometimes takes years for them to get over it.

**Gogek:** Why shouldn't they internalize grades?

**Vining:** Because they're too old, they're in their twenties. How you do in law school grades certainly doesn't indicate what sort of person you are or even what sort of mind you've got.

**Gogek:** Does that mean that there's not necessarily an accurate correlation between the grades and the students who receive them?

**Vining:** Yes, it certainly suggests that. It's certainly not accurate. A student who does very poorly is generally rather confused. At the same time, students who do very well are not necessarily very clear about things legal. They have mastered the technique of writing exams or they know about the things examined.

**Janda:** I wonder whether the "blahs" reflect a real problem with the nature of the curriculum at various schools. Is there an evaluation which has to take place in legal teaching that students perhaps give in feelings not quite attached to the study of law. If so, what kind of evaluation ought to take place?

**Vining:** Well, this is something no American law faculty has solved. I think it is true that the case method of teaching, which ten or fifteen years ago was very exciting to experience for the first time, has lost much of its excitement. Unfortunately, we have very little to replace it with, partly because of the nature of what we're teaching. After all, law is heavily dependent on the interpretation of authority and torts. What one does with the case method is chew on these texts over and over again. Moving off into a sociological, historical, or economic analysis of what we are trying to teach is in a way giving up what is distinctive about law. We talk

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# Vining

Cont'd from p. 2

about the psychology of law or the philosophy of law or the economics of law and those "ofs" are important. The law in these remains unrooted.

**Pallard:** According to you, what is distinctive about law?

**Vining:** That it is non-scientific, that it is not objective in the sense that the material social sciences and natural sciences view themselves as working with is "objective", and that it always struggles with the phenomenon of authority.

**Janda:** You have been stressing this notion of authority in the law. However, if there is anything remarkable about recent trends in American legal teaching, it is an attempt to move away from the old kind of treatise writing and the old kind of authority structure in the law and an attempt to link the law with wider phenomena.

**Vining:** That's right -- interdisciplinary studies.

**Janda:** You suggested, however, that this approach threatens to lose sight of what is distinctive about the law. Now, where do you fall? Do you think we ought to move more towards rediscovering the authority behind the law, or should we bow to the interdisciplinary approach?

**Vining:** Well, if you ask me where I fall, I fall on the first side of the line. I think we're coming to the end of the romance of the social sciences and the thought, propagated at the turn of the century, that law is simply a social science. This was the way of escaping the grip of the very rigid doctrinal law of

that time and was reflected in all the major law faculties of the United States which added an economist or a psychiatrist or a sociologist to their staff. Those programs have not really worked, and I think the reason is that law isn't an interdisciplinary study. Law uses economists to answer economists' questions, but it doesn't turn to economics to answer any legal questions.

**Gogek:** On the other hand, though, if one looks at the way the law and economics movement has taken over in the United States and now in the United Kingdom, can one say that the interdisciplinary approach is spent?

**Vining:** You're right, that is contrary evidence. And you simply have to decide for yourself whether you believe it, whether you think it works. The attempt to reduce legal analysis to economic analysis is, I suppose, the most distinctive feature of American legal scholarship of the last several years. I don't think it works.

**Gogek:** Do you think that the American legal system as a collective believes it?

**Vining:** No, I don't. One of the problems is that economic analysis has to begin from a legal starting point. It assumes many of the answers to the questions

it asks. Take corporations, for instance. Any economic analysis of corporate law or securities law has to start off with the proposition that a business corporation is a "firm" in the sense of economic theory. It is fully profit maximizing and it owes duties only to shareholders. And what is a shareholder? Well, a shareholder is also an abstract profit-maximizing unit. And that is certainly not the law in Britain and it is, I think, not the law in the United States. And yet, that is the starting point for economic analysis.

**Pallard:** Is the emergence of economic analysis in the United States due to the fact that the United States is really the capitalist society par excellence?

**Vining:** Yes, it is the one capitalist society today. I doubt there is one in Europe and Canada is surely less capitalist than the United States. I don't know what to say about how capitalist the United States is. The U.S. deals in a lot of fictions about itself. Any country so heavily structured by multinational corporations as the United States -- corporations which are dependent on central financial regulation and capital market regulation as well as substantive regulation of one sort or another

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# Quid Novi

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## Editorial

### N'oublions pas les sections françaises

Il y a déjà quelques temps, le comité de révision déposait son rapport quant à la situation de la faculté de droit au sein de l'université McGill. Le comité, après avoir étudié avec attention les considérations académiques et budgétaires, s'est prononcé en faveur d'une recommandation positive.

L'allocation de fonds additionnels ne peut avoir que des répercussions bénéfiques sur la faculté. Pour l'instant, on ne peut que spéculer sur les recommandations spécifiques faites par le comité, celles-ci n'ayant pas encore été rendues publiques. Cependant, les rumeurs vont bon train. L'on parle d'augmenter le corps professoral, d'agrandir la bibliothèque, de trouver de nouveaux locaux pour les classes, de faire une restructuration complète du programme académique.... Il va sans dire que le choix des priorités doit se révéler judicieux et l'emploi des fonds doit se faire à bon escient.

Parmi ces "priorités" présentement à l'étude, il ne faudrait certes pas oublier la question des sections françaises des cours de droit civil. Il peut sembler à prime abord déplacé de plaider en faveur de la survie des sections françaises dans une université anglophone. Mais le but même que s'est fixé la faculté de droit, sous l'égide de son programme national, de former de vrais "avocats nationaux" ne doit pas s'arrêter au biculturalisme juridiques. Ce serait manquer à sa propre devise. Si l'école croit véritablement à une "identité nationale" qui la rend unique et la distingue des autres facultés de droit au Canada, elle se doit de poursuivre son but et de promouvoir non seulement le biculturalisme juridique mais également le bilinguisme (i.e. l'apprentissage du vocabulaire juridique dans les deux langues). Elle doit voir à la formation complète de ses "avocats nationaux."

La sauvegarde de telles sections peut également s'avérer des plus avantageuses pour les anglophones qui veulent se présenter à la chambre des notaires ou au barreau de la province de Québec. Un cours en français leur permet de s'habituer graduellement au langage juridique français, ce qui est également un atout favorable pour les francophones. Par ailleurs, quel avantage n'y a-t-il pas à assurer aux étudiants la formation académique la plus complète possible?

Les dés ne sont pas encore jetés. C'est pourquoi il faut dès maintenant manifester notre intérêt sur certains points. Les "autorités" n'agissent jamais devant l'indifférence et l'inaction est souvent interprétée comme signe d'acquiescence. Et il sera alors trop tard pour se plaindre!

Martine Turcotte



## What Did You Do This Summer?

Sunday in Stanley Park  
late spring, early summer.  
Ambitions hanging in my stomach  
with the fish  
from the T.V. dinner news.  
Heard a sinking story  
of the Argentine General Belgrano.  
Falklands Pac-Man as told by Knowlton Nash:  
A prince playing on the deck invincible,  
The Q.E. II in a game of battleships  
and planes.

The defence press office wants censored:  
Sea harrier jets each armed with 1,000 pound,  
bombs fitted with air blasted fuses  
that explode 50 feet above the ground  
with the aim of causing casualties.

Video dots of an air launched french  
exocet missile,  
the Pope kissing red carpets.

Sunday in Stanley Park  
and the mountains of N. Van.  
are misty watercolours.

The Prime Minister says that was  
a clumsy gesture. Newsweek agrees.  
He is a bad Gaucho Galtieri.

What an argie - spoke 15 spellbinding  
minutes to the islanders who were unable to  
understand, as it was all in Spanish  
with no translation.

But, let's not forget the english force  
of the cane used in private schools.  
Beat that boy. Send these men there  
to win after only (one) 100 years of negotiation  
(after we stole them). The superior training  
of british pilots.

The Generals - great enough to know  
peace as a means to war are  
clutching the groins of their battledress  
at the public urinal again  
the holy grail in the holy hand  
To England, Viva Patria!

In The Economist a picture  
black and white of snow on Pebble Island  
with a map of airstrips, roads, settlements.  
What does it mean - global politics when  
a small fishing village converts  
into a world movie screen?

COLD AND WINDY  
THE PUPIL OF A NINETEEN YEAR OLD  
SHOOTING AT ANOTHER  
MUD BETWEEN THEIR TOES.  
FOR THE GIRL BACK HOME  
A HALF EATEN FRUIT  
ON A HEADSTONE.  
EARLY IN THE SUMMER  
SUNDAY IN STANLEY PARK.

Paul Mayer

## Duff-Rinfret Scholarships

For the ninth consecutive year the federal Department of Justice is offering seven Master's degree scholarships worth a total of approximately \$12,000.00 each to superior law students or lawyers who wish to pursue a Master's degree in Canada.

The Duff-Rinfret Scholarship is intended to promote the development of Master's programmes in Canadian law schools and to produce high quality research on matters within the jurisdiction of the federal government.

The Scholarship is of twelve months duration, is tenable at any Canadian law faculty with a Master's programme which includes a thesis, and is valued at \$9,900.00 for 1983-84, plus tuition fees, necessary travelling expenses and a thesis allowance of \$800.00. The deadline for applications for the 1983-84 academic year is February 11, 1983.

Further information and the appropriate application forms are available from the Student Affairs Office or from the Law Students' Association.



### Announcement

Wine and Cheese, Thursday,  
January 27th, Common Room,  
4:00 - 6:00 p.m.

Social Committee



# The Verdict

by Demetrios Xistris

There is something known in Hollywood as the plausibility factor. The more that reality must be suspended, the greater the PF factor that is needed. Tootsie, for example, requires a high PF for us to believe that a man can successfully stage himself as a woman. However The Verdict lays no claim to such a plausibility factor. It brashly states that the legal profession operates as portrayed. To dismiss the film as legally and procedurally inaccurate would only result in missing the substance of Mr. Lumet's message.

The Verdict attempts to raise serious questions concerning the legal profession's relationship to the judicial system. Do the apparent high handed tactics used to "influence" the judge or jury, whichever the case may be, serve to promote the desired goals of the judicial system? In further contemplation, does the adversarial system have any significant correlation to the attainment of just reward which the courts are supposed to serve?

The answer suggested in the movie is no. The present failure of our judicial structures can be attributed in part to the the instit-

utions that function within it. Frank Galvin, the lawyer who has reached the lowest rungs of the legal profession, soon finds out that justice is not always delivered in a court of law. Rather there are intangibles that surface to cause the lawyer's role as social engineer to be severely impaired. Intangibles such as presenting a case against public opinion even though it is grounded squarely on the law or having to deal with the persuasive role of money that seeks to attack the judicial system at the core.

Mr. Lumet has presented these themes before (most recently in Prince of the City) in such stark settings that they receive full treatment of the audience's attention. He visually directs the film through the consciousness of Frank Galvin. The slow development of a couple of Polaroid SX--70 prints highlights the injustices that have been caused. As the prints develop so does Galvin's motivations. What was before a desire to make money has now become a view to serving the institution whereby justice can be rewarded. Galvin's role becomes one of master-servant through which judicial efficiency is now the higher order value.

These are undoubtedly serious questions that need to be re-evaluated in our society today. Philosophy has

debated these questions from Socrates to H.L.A. Hart yet, as The Verdict suggests, we may have not come to a satisfactory resolution to the  
**Cont'd on p. 7**

## The Second Annual "Frosbite Marathon"

On Thursday, February 3rd, the Sports Committee will hold the second "Frosbite Marathon". Once again a group of courageous students will confront the cold and icy perils of a ten kilometre run through the University's upper campus. The Marathon's objective is twofold. First, it is a fundraising event which helps to ensure our Faculty's representation at the Annual Common Law Sports Tournament, to be held February 18-20 at Osgoode Hall in Toronto. The proceeds of the event will defray a portion of the transportation and lodging costs. As well, a full 15% of the proceeds will be donated directly to the Canadian Heart Foundation, on behalf of the student body. Second, by its consequential aches and pains, the Marathon gives notice to those self-perceived "jocks" that a great deal more cardiovascular and muscular work is in order if our representation in Toronto is to result in any form of athletic success.

These objectives will only be achieved if there is both a high level of participation among those who will be representing the Faculty in Toronto, and strong financial and moral support (the participants will run "through" the Faculty eight times) from students and professors alike.

Participation, sponsorship and encouragement are the keys to the continued success of the Frosbite Marathon.

**Michael Larivière**

NEED SOMETHING MOVED?



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# Student representation debated

Cont'd from p. 1

there is no alternative service, it is better than nothing.

The VP Civil Law, Stéfán Legouëff, announced that the questionnaire, sent out to student members of standing committees, did not seem to be all that popular since none have been returned so far. The second announcement was of an even less optimistic nature; the Carnaval Interfacultaire had to be cancelled because of transportation problems.

The students' representative on Faculty Council, Fred Hoefert, asked for suggestions to attract students for two new committees. It was the consensus that some more advertising could be useful.

Bruce Fitzsimmons, speaking for the class presidents, announced that the exam schedule is final. He he had found the work a rewarding experience, while Stephan Fogarty was a little bit distressed by the animosity he had encountered while being involved. He suggested that there should be more student input. Suzanne Michaud offered to make a "How to" guide for the next generation of students working on exam schedules.

## The Verdict

Cont'd from p. 6

problem that is manifest when justice is sabotaged. The fact that it becomes so difficult for Galvin to convict these doctors of negligence only serves to reinforce this problem.

# V.P. reports on Stud Soc

by Tim Baikie

to requests for information.

Three somewhat contentious issues were the subject of lengthy (and sometimes, acrimonious) debate at the last Council meeting of Students' Society. The first was Studsoc's sponsorship of a speaker from the South African Foundation, a group opposed to any divestment or boycott of South Africa. Although the Foundation rejects the notion of apartheid, Studsoc was questioned about its sponsorship of the event, in view of its longstanding policy in favour of divestment. Some councillors went so far as to call the speaker a racist. The debate will continue at a special meeting to be held next Wednesday evening.

The second issue concerned the establishment of a birth control co-op by the Women's Union. Lengthy consultation between the Women's Union and the Executive resulted in a compromise. The co-op will open, but sales of diaphragms will be suspended pending an examination of potential legal liability on the part of Studsoc. The issue appeared to be resolved until Peter Dotsikas (VP University Affairs) moved that the co-op be run out of Health Services. He prefaced the motion with an attack on the motivation of the Women's Union, calling its organizers "unethical" and "irresponsible" with respect to the way they had set up the co-op. The proposal was defeated and Dotsikas (who was not against the idea of a co-op per se) went along with the main motion, making the vote unanimous. When the co-op opens on Monday in Room 423 of the Union Building, contraceptives will be sold at prices well below retail value and counsellors will be available to respond

Bruce Hicks (VP Internal) triggered the third round of heated discussion with his motion to censure the South African Committee for damage done to the Union Building as a result of stickers plastered all over the premises. Most councillors felt a vote of censure was far too severe, since the damage was a result of the actions of a few overzealous individuals, rather than a concerted action endorsed by the SAC. The SAC will be billed for the damage and will be asked to ensure that it is not repeated.

The final motion of the evening was one calling upon Senate to act fairly and expeditiously in dealing with the grievance of a dentistry student against her faculty. The individual in question has been waiting for almost a year to have this resolved.

That's all for this week. Next week I will report on a conference to be held at Concordia University concerning the Quebec Student Movement.

Vining

Cont'd from p. 3p

-- can't be purely capitalist. There is one theory that the Federal Trade Commission, which regulates deceptive advertising, is absolutely necessary to a market economy because otherwise consumers wouldn't believe anything advertisers said. Furthermore, it is argued that if the Commission weren't there regulating advertisers, the advertisers would have to create it. So I'm not sure the United States is in fact very far behind Canada and Europe.

NEXT WEEK: PART TWO



## LL.B. III News

A. A number of options have been suggested for our class picture:

1) composite prepared by Van Dyke's - 11 x 14 in., \$19.95 ea., requiring those who have not had their picture taken yet but wishing to be included in the composite, to have it taken and purchase a composite.

2) group picture taken by Van Dyke's here at the Faculty - 11 x 14, \$25.00 ea. if 40 purchased, requiring one week's notice to Van Dyke's and a one-hour photo session.

3) group picture taken by professional photographer and processed by commercial developer.

4) group picture taken by competent amateur photographer. Any names you could recommend would be appreciated. When sufficient info has been gathered, I'd like to call a class meeting and put the options to a vote. Hopefully, this can be done in time to have the requisite pictures taken before Study Week.

B. Are there any ideas for an LL.B. III year-end party other than a Thompson House party? Our class has \$75.00 to spend and might, of course, co-host a party with one or both of the other graduating classes (BCL III, LLB/BCL IV).

C. Further to the note in the last Quid Novi, the Law Class of '83 needs a class rep (main duty to write newsletter from info gathered by Graduate Society) on the West Coast. For those of you intending to article in Vancouver, this would be an opportunity to keep in touch with friends "back East" while improving the quantity and accuracy of the info in the newsletter. You can give your name to Tony Martino or me.

Suzanne Michaud

# From the Cheap Seats

by Wayne Burrows

## Strife Torn 'Moigns Triumph

Fresh from their Christmas exhibition tour of several major U.S. colleges, the Fighting Frankelmoiners returned Monday to the basketball courts of the Currie Sportpalace. The question on the minds of many observers was whether persistent rumours of internal dissension on the team are in fact true.

Allegations of excessive use of Light beer, pre-game carousing and jealousy about the fame of Paul "Sweet-Bells" Dunn have shocked the team's loyal fans. According to John Webster's mommy, "My boy has never been involved in anything like this before. I think he's fallen in with a bad crowd."

Rumours of discord initially began to spread when Rick "I play big" Elliot suffered a serious knee

injury at practice. His teammates reportedly cheered the opposing player who had caused the accident. There also have been persistent reports that newcomer Bruce "Caboose" Fitzsimmons has upset several of the grizzled veterans. According to one player, he is "too yappy." Even normally laconic Steve Kreiger has become infected. Reportedly furious with repeated character assassinations and jokes about his glass eye, Krieger has launched a multi-million dollar lawsuit against several of his teammates.

Despite this swirling tempest, the FF'ers managed to defeat the Flying Butts 50-30, thanks to the impressive play of "Rave" Wiseman and Cliff Halickman. This reporter can only conclude that the team that fights together stays together.

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